

Lcm2OweC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 MARK OWEN, Individually and on
4 Behalf of All Others Similarly
Situated, *et al.*,

5 Plaintiffs,

New York, N.Y.

6 v.

19 Civ. 5462 (GHW)

7 ELASTOS FOUNDATION, *et al.*,

8 Defendants.

9 -----x

Remote Conference

10 December 22, 2021
11 3:00 p.m.

12 Before:

13 HON. GREGORY H. WOODS,

14 District Judge

15 APPEARANCES

16
17 BLEICHMAR FONTI & AULD, LLP
Attorneys for Plaintiffs
18 BY: GEORGE N. BAUER
JAVIER BLEICHMAR
19

20 PAUL HASTINGS, LLP
Attorneys for Defendants
21 BY: ZACHARY ZWILLINGER
KENNETH P. HERZINGER
22
23
24
25

Lcm2OweC

1 THE COURT: This is Judge Woods. Do I have a court
2 reporter on the line?

3 THE COURT REPORTER: Good afternoon, your Honor.
4 Kristen Carannante.

5 THE COURT: Good. Thank you very much. Good
6 afternoon.

7 Let me begin by taking appearances from both parties.
8 What I would like to do is to ask the principal spokesperson
9 for each party or set of parties to identify him or herself and
10 the members of her team rather than having each lawyer
11 introduce themselves individually.

12 So let me begin with counsel for plaintiff. Who is on
13 the line for plaintiffs?

14 MR. BLEICHMAR: Your Honor, good afternoon. This is
15 Javier Bleichmar, from Bleichmar Fonti & Auld. I'm here with
16 my colleague George Bauer; and, if I may, I would like
17 Mr. Bauer to take the lead at this hearing.

18 THE COURT: Thank you. Good.

19 And who is on the line on behalf of defendants?

20 MR. HERZINGER: Good afternoon, your Honor. This is
21 Ken Herzinger, at Paul Hastings, and on the line with me is my
22 colleague Zach Zwillinger.

23
24 THE COURT: Good. Thank you very much.

25 Let me begin with just a few brief comments about the

Lcm2OweC

1 rules that I would like the parties to follow during this
2 conference. At the outset, please remember that this is a
3 public proceeding. Any member of the public or press is
4 welcome to audit the conference. I am not monitoring whether
5 third parties are auditing the conference now, but you should
6 just keep in mind that they are entitled to do so and may.

7 Second, please keep your lines on mute at all times
8 unless you are intentionally speaking to me or the
9 representative of another party.

10 Third, please state your name each time that you
11 speak. You should do that even if you have spoken previously.

12 Fourth, please abide by any instructions from our
13 court reporter that are designed to help her do her job. And
14 finally I am ordering that there be no recording or rebroadcast
15 of all or any portion of today's conference.

16 So counsel, with all of that out of the way, let's
17 turn to my agenda for the conference today. My agenda is
18 relatively straightforward. This is an initial pretrial
19 conference with respect to this case.

20 First, I hope to give the parties the opportunity to
21 describe any legal or factual issues that you would like to
22 highlight for me. I have reviewed the materials that have been
23 submitted on the docket to date. Still, it can be helpful to
24 hear from you if there are any issues that you would like to
25 highlight.

Lcm2OweC

1 Second, I hope to discuss the process that we will be
2 using to litigate the case going forward. To that end, I hope
3 to use the parties' proposed case management plan and
4 scheduling order as the framework for that conversation.

5 And finally I hope to discuss what, if anything, I can
6 do to facilitate an amicable resolution of the case.

7 So counsel, with all of that out of the way, let's
8 begin.

9 Counsel for plaintiff, what would you like to tell me
10 about the case as a whole.

11 MR. BAUER: Thank you, Judge. This is George Bauer,
12 of Bleichmar Fonti & Auld.

13 Just as background, your Honor, this is a Securities
14 Act of 1933 class action. We allege the sale of unregistered
15 securities in violation of Section 5 and 12(a)(1) and also
16 Section 15 against the individual defendants.

17 The case revolves around the alleged unregistered sale
18 of securities in the form of ELA tokens, which are digital
19 assets, that were created and marketed by the defendants. The
20 fact that the case resolves around ELA tokens, your Honor,
21 presents a certain level of complexity to this case. I think
22 issues that will be explored in discovery include sort of
23 esoteric issues surrounding the application of the securities
24 laws to digital assets and questions that will need to be
25 answered include, you know, what exactly these assets were, how

Lcm2OweC

1 they were used, how they were traded, and how the digital asset
2 exchanges worked. Those are sort of evolving questions, you
3 know, in -- in the Court's questions that is going to require a
4 lot of time and energy to cut through.

5 Adding to that, your Honor, is a foreign element to
6 the case. We expect discovery requests both to the parties to
7 the defendants as well as third parties in the United States,
8 but also abroad. We expect to seek discovery from China,
9 possibly from Singapore, possibly from elsewhere, your Honor.
10 So in addition to, you know, potential foreign language
11 complications that could arise, we also expect additional
12 process will be required through certain international
13 conventions.

14 So just as some background, I believe that kind of
15 combines both of your inquiries, your Honor, as to the legal
16 and factual issues at play, but also litigation and discovery
17 going forward.

18 THE COURT: Thank you.

19 Let me turn to counsel for defendants. Counsel, what
20 would you like to tell me about the case as a whole?

21 MR. HERZINGER: Thank you, your Honor. This is Ken
22 Herzinger. So I agree with the prior comments by Mr. Bauer
23 laying out the elements and just to take a step back for your
24 Honor, we mentioned this in our motion to dismiss brief, but we
25 purposely did not address or move on whether, you know, the

Lcm2OweC

1 grounds of whether or not the underlying assets, they are
2 called ELA tokens, are securities at the motion to dismiss
3 stage, because we believe that it would require -- it will
4 require, you know, developed record and discovery, and
5 therefore was not appropriate to address on a 12(b)(6) motion.
6 And I agree with Mr. Bauer that that's going to require some
7 amount of work, including expert discovery.

8 And then to add on to some of the additional discovery
9 and factual issues that we are going to need to address, the
10 way I read your Honor's order and the allegations in the
11 complaint is that we are really looking at essentially three
12 different sets of transactions. You know, you have got the
13 initial offering of ELA token sale, we have secondary market
14 sales, and then, last but not least, are I think what the Court
15 referred to as lock-in sales, and those occurred during, you
16 know, a couple-of-year period. So sort of three separate sets
17 of analyses within the overall analysis is the way I would kind
18 of frame that.

19 And then connected to that, from a factual development
20 standpoint, discovery standpoint, those exchange sales or
21 secondary market sales are done by face-to-face purchasers
22 through third-party exchanges, and I expect that we will need
23 to take -- both side also need to take discovery from them for
24 various issues, including potentially damages, and that will
25 likely add to the time needed in order to conduct discovery

Lcm2OweC

1 because I understand there were multiple exchanges and there is
2 probably quite a bit of data and other information that needs
3 to be gathered.

4 And I concur with Mr. Bauer with respect to the
5 discovery issues related to Chinese discovery. Some of our
6 clients, some of them reside in China. The data is in China.
7 As I am sure your Honor knows from other cases, there are
8 various complex Chinese data privacy laws that we will need to
9 work through with plaintiffs' counsel in order to ensure that
10 we can have the appropriate checks and balances so we can take
11 that discovery out of China so that we can use it in our
12 litigation.

13 On the one positive side, I guess, one benefit, one
14 silver lining to the coronavirus is that we have discussed with
15 counsel that some of the third-party discovery, including
16 overseas discovery. I think we can work out arrangements to do
17 that virtually, assuming that that is acceptable to the Court,
18 and that may speed up and reduce cost and expense and some of
19 the case discovery.

20 Thank you, your Honor.

21 THE COURT: Good. Thank you.

22 Counsel, in your letter, you note that one of the
23 issues that you want to explore is whether the transactions
24 were exempt from registration requirement. I think that's the
25 only ground that you didn't talk about specifically in your

Lcm2OweC

1 remarks now. Can you comment on that briefly?

2 MR. HERZINGER: Yes, your Honor. So it is defendants'
3 positions that the ELA tokens were not securities sales in
4 connection with the initial sales, the secondary market sales,
5 or the lock-in. But to the extent we end up moving forward
6 through summary judgment and trial, we believe that certain of
7 the exemptions would apply even if they were to establish --
8 the plaintiffs were to establish a *prima facie* case that they
9 were securities under the Howey test in connection with those
10 transactions. So we understand those are our affirmative
11 defenses, and we would be taking discovery for the purpose of
12 establishing those defenses to the extent the plaintiffs
13 establish a *prima facie* case based on the facts.

14 THE COURT: Good. Thank you.

15 And this is a question that we will explore in much
16 greater depth in the future -- and please feel free to demur if
17 you don't want to engage in this conversation now, it's not an
18 issue at all -- but just out of curiosity, you mentioned the
19 Howey test and the issue of whether or not these tokens are
20 securities. There is a suggestion in the complaint that the
21 ELA tokens are to be used in connection with what I will
22 describe as a platform pursuant to which the sales of other
23 things will be made. Can you tell me a little bit more about
24 the platform on which the ELA tokens were supposed to be used?
25 And I will tell you, I am asking because I am curious of the

Lcm2OweC

1 extent to which the value of the ELA tokens may be linked to
2 the success of that underlying ecosystem. Counsel, if you are
3 prepared to talk about this now, please let me know. Again,
4 feel free to demur.

5 MR. BAUER: Judge, this is George --

6 MR. HERZINGER: Your Honor --

7 MR. BAUER: Go ahead, Ken.

8 MR. HERZINGER: No. Go ahead, George. Didn't mean to
9 interrupt you.

10 MR. BAUER: Judge, this is George Bauer for the
11 plaintiffs again.

12 I certainly understand the Court's question. I would
13 say our best understanding of the platform is that it was sort
14 of an online environment to trade and pay for products, and ELA
15 tokens were a way for customers or investors to invest in the
16 company and make use of the company's offerings.

17 Truth be told, your Honor, this is one of the reasons
18 why we expect discovery to be complex, because these questions
19 of what these tokens were, what the platform was, how these
20 tokens were traded, how these transactions on these exchanges,
21 which, you know, were not the New York Stock Exchange, were not
22 NASDAQ, these were esoteric digital asset exchanges, how all of
23 that worked are very much questions, I think, for both sides.
24 So that's why we expect discovery, both fact and expert
25 discovery, to focus on these issues and to be particularly

Lcm2OweC

1 complex.

2 THE COURT: Good. Thank you. That's fine for now.

3 So let me turn to the second point on the agenda,
4 assuming defendants don't want to volunteer anything else in
5 response to the inquiry.

6 Counsel for plaintiffs, I have heard a little bit
7 about your expectations for the conduct of discovery. I
8 certainly appreciate that the process here will be time
9 consuming. It would be helpful for you to give me a sense,
10 however, of the nature of the discovery that you expect to
11 conduct, in particular insofar as it may result in a
12 substantial amount of time being required to complete this
13 work.

14 I understand that there is some international
15 discovery that is anticipated. You have described the
16 possibility of third-party discovery. Can you give me a sense
17 of the quantum of third-party discovery that you expect to seek
18 and where those third parties are located?

19 MR. BAUER: Yes, Judge. This is George Bauer again.

20 I think the full scope of discovery at this time I
21 think is difficult to say. The parties have not yet exchanged
22 initial disclosures, so, you know, the number of custodians,
23 the types of and sources of data I think are still unknown.
24 But certainly in terms of third-party discovery, there are
25 certain affiliates of the defendants from whom we expect to

Lcm2OweC

1 serve discovery.

2 For instance, there was -- and without limitation,
3 your Honor, for instance, there is an advertising company that
4 is discussed in the complaint. We would likely seek discovery
5 from them. An advertising company that was retained by the
6 defendants to help advertise the sale of ELA tokens in the
7 United States.

8 We expect to seek discovery from the exchanges
9 themselves. Two exchanges in particular, one -- and I
10 apologize if I'm mispronouncing it. I believe it is pronounced
11 Huobi, the other Kucoin. Both, we understand, are located
12 abroad. And then additional third parties, individuals who are
13 affiliated with the defendants.

14 Other than that, at this time, your Honor, it is a
15 little difficult to quantify, you know, all of the individuals
16 or entities from whom we would seek discovery without the
17 benefit of initial disclosures and without the benefit of at
18 least initial discovery.

19 THE COURT: Thank you.

20 Counsel for defendants, I have the same question for
21 you. What are your expectations for the conduct of discovery
22 here, again, focused on things that may take time?

23 MR. HERZINGER: Yes, your Honor. This is Ken
24 Herzinger again for the defendants.

25 So one of the unique features of this case is that

Lcm2OweC

1 because Elastos is a decentralized ledger entity, there are
2 third parties. Basically it's a nonprofit organization known
3 as Cyber Republic. So it's a community that has formed around
4 the Elastos, the centralized network, and it consists of
5 Elastos token holders, people from the Elastos Foundation,
6 including the defendants, and various different Elastos
7 ecosystem partners, including some of the decentralized
8 applications that operate on the platform. Going back to your
9 Honor's last question, that's how the blockchain works and
10 certain assets like movies and things can be traded and
11 exchanged. So those individuals and those various entities,
12 you know, will have relevant information. I think the
13 plaintiffs have cited to some statements in the complaint, for
14 example, that were actually made by the community Cyber
15 Republic versus our client. But, in addition, they may have
16 relevant information and evidence to help us both counter the
17 argument that the Elastos token is a security but also
18 potentially to some of the affirmative defenses that we
19 mentioned before. And so that's just one nuance I want to
20 mention for your Honor. And some -- actually many of those
21 community members, but not all, are also in China and in
22 Singapore and in other countries. They are kind of disbursed
23 throughout the globe. So that's another kind of unique nuance
24 to this matter.

25 THE COURT: Thank you, very good.

Lcm20weC

1 So counsel for plaintiff, let me turn back to you.
2 There is a proposal regarding the timeline for filing motions
3 for class certification. Actually the parties jointly propose
4 September 30, 2022, as the date for those motions. The
5 principal thing that I want to ask about that is about whether
6 and to what extent expert testimony or other evidence will be
7 needed in order to contribute to the class certification
8 motions. That's just because the class certification motion
9 deadline is substantially before the expert discovery deadline.
10 So I just wanted to inquire of you about that question. Do you
11 anticipate that you are going to need expert testimony in order
12 to move for class certification? If so, how did the deadlines
13 that you are proposing jibe?

14 MR. BAUER: Yes. Thank you, your Honor. This is
15 George Bauer again.

16 I believe we will likely require some expert testimony
17 in connection with the class certification motion, certainly
18 damages, possibly also testimony concerning the underlying
19 assets.

20 I do recognize, your Honor, that there does appear to
21 be a conflict between that deadline and the broader deadline
22 for expert discovery. I think the parties' understanding was
23 that the class certification would be more of a discrete
24 inquiry, whereas the broader expert discovery deadline would
25 deal with the broader issues in the case. And so I think that

Lcm2OweC

1 was part of the driver for making the deadline September 30 for
2 the class certification.

3 Part of it also is that we did want to complete a
4 significant or substantial completion of document production
5 before class certification because, again, we think that some
6 fact development would be required before we move for class
7 certification.

8 So I think that was the rationale for placing the
9 deadline where we did.

10 THE COURT: Good. Thank you. Fine. Thank you very
11 much.

12 So counsel, let me just say a few brief words based on
13 your comments about the proposed case management plan and
14 scheduling order.

15 At the outset, I think that all of the deadlines that
16 the parties have proposed are reasonable. I think that there
17 is more than ample cause to set a schedule that is a lengthy
18 year. It is a complex case that involves international
19 discovery. I think that setting about a year to complete fact
20 discovery here is very reasonable and prudent. I think that
21 the parties can, working diligently, meet these deadlines. So
22 I expect to order the case management plan and scheduling order
23 substantially in the form that the parties have proposed.

24 There are two deadlines included in paragraph 14 of
25 the case management plan and scheduling order, one of which I

Lcm2OweC

1 am going to order, or two of them I am going to order, and the
2 third I am not.

3 First, I am happy to set the deadline for defendants'
4 answer to the amended complaint as January 13, 2022. That
5 application is granted, and I have established that as the
6 deadline for defendants' answer.

7 I understand that the parties anticipate that you will
8 substantially complete document productions by May 15, 2022. I
9 am happy to endorse that proposal and to include what I will
10 describe as the subsidiary deadline for substantial completion
11 of document production. That date will be May 15, 2022. That
12 deadline is, by the nature, relatively fluid. I would need to
13 rely on you, counsel, to let me know if you think that there is
14 a failure of a party to meet that deadline, because it's a
15 relatively open-ended standard. "Substantial completion" is
16 not a fixed percentage, but I will endorse that portion of the
17 parties' proposed modification to the case management plan and
18 scheduling order.

19 I am not going to set a deadline for plaintiffs to
20 move for class certification. It may be that, in the course of
21 discovery and your consideration regarding how best to proceed,
22 a different decision will be made regarding the appropriate
23 timeline for motion practice on class certification. So I'm
24 not going to set a deadline now for motions on class
25 certification. Instead, what I am ordering now is that counsel

Lcm2OweC

1 for plaintiff file a letter requesting a premotion conference
2 prior to filing any motion for class certification. Your
3 premotion conference request letter with respect to such a
4 motion will provide us with an opportunity to set an
5 appropriate schedule for your motion practice. Again, so I am
6 not setting a deadline now for class certification motion
7 practice. I leave it to the parties to let me know in the
8 future when you have a better sense of the case when such
9 motion practice will be appropriate.

10 Now let me just say a few brief words about the case
11 management plan and scheduling order. Again, I think the
12 deadlines that the parties proposed are reasonable. I note
13 that the case management plan and scheduling order contains
14 real deadlines. They are deadlines that you are expected to
15 meet. You will see that in paragraphs 7(a) and in 8(d) that
16 the case management plan says that the relevant category of
17 discovery is to be completed by a date certain. You should
18 understand that that is an intentional choice of words by me.
19 My expectation is that discovery will be completed by the
20 relevant date, in other words, that there will be no more of it
21 after that date.

22 There are a number of corollaries to that basic rule.
23 You can extrapolate them all yourselves. I want to highlight
24 two basic corollaries for you here now, however.

25 First, to the extent that you have any concerns about

Lcm2OweC

1 the adequacy or timeliness of the discovery responses of
2 another party or the third party, and you are unable to resolve
3 that acting promptly and diligently, you should bring that
4 dispute to the Court's attention. You should not sit on or
5 hoard discovery disputes until late in the discovery period,
6 much less after the discovery period. That's because this is
7 the deadline for completion of discovery. It is not the date
8 on which we will begin litigation about discovery. So if you
9 fail to bring an issue to the Court's attention promptly so
10 that you can get and use the responsive materials during the
11 discovery period, you should not expect that I will be adding
12 time to the discovery period to permit to you litigate the
13 dispute. So please do not hoard discovery disputes with the
14 expectation that I will add time to discovery to permit you to
15 litigate them. My expectation is, to the contrary, that
16 discovery will be completed by these deadlines, meaning that
17 there will be no more of it after the deadlines.

18 The second corollary that I want to highlight is a
19 very simple one, namely, that you should take into account the
20 fact that these are real deadlines as you are requesting
21 discovery and taking depositions. Here, that general point has
22 a couple of important manifestations.

23 First, I understand that there is a substantial amount
24 of third-party international discovery. You have alluded to
25 the process to obtain that information through legal process

Lcm2OweC

1 abroad. You know that that process, I expect, takes a
2 substantial amount of time. First, if you need my assistance
3 to make the request in the foreign country, you need to get me
4 the information required for me to act on the application and
5 then you need to get the application to the foreign
6 jurisdiction with sufficient advance notice so that you can
7 complete the relevant discovery during the discovery period.
8 Because seeking international discovery can be time consuming,
9 both in terms of getting approval from me and then even more so
10 getting a response from the judicial or other authority abroad
11 and then obtaining the discovery, I encourage you to focus on
12 those issues early in the case. Again, that is because these
13 are real deadlines. If you come to me asking for letters
14 rogatory or the like at a point in the discovery process where
15 it is improbable that the local judicial authority will be able
16 to obtain discovery within the fact discovery period that I am
17 establishing in this case management plan and scheduling order,
18 you may find that I will simply choose not to endorse your
19 application. That, again, is because of the basic rule that
20 these are deadlines for completion of discovery. If you wait
21 to bring me an application for international discovery until
22 such a time that it is unlikely that you will actually get a
23 response during the discovery period, you should not expect
24 that I will act on it. Again, that is because these are
25 deadlines for completion of discovery and if you are asking me

Lcm2OweC

1 to ask a judicial authority to have someone provided for a
2 deposition and it won't happen until January 2023, then I may
3 take the position that you have missed your opportunity to
4 conduct that discovery. So I am highlighting this so that you
5 focus on this bottleneck early in the case and you take the
6 appropriate steps here and abroad in order to obtain the
7 discovery that you want.

8 The second consequence of that second corollary that I
9 just want to highlight is the simple fact that if you wait to
10 take a deposition or to request information until late in the
11 discovery period that you will be left with less time to
12 conduct follow-up discovery. That's a relatively
13 straight-forward point, but I just ask you to keep it in mind.
14 If you choose, for whatever reason, to wait to make a request
15 for information or to take a deposition, then the consequence
16 will be that you will have less time to conduct follow-up
17 discovery with respect to any information that you might glean.
18 So you should just keep that in mind as you are structuring
19 your discovery practices in the case.

20 Now, while all of these are real deadlines, I do want
21 to draw your attention to the deadlines in paragraph 8(c). I
22 apologize for taking up your time on this. I'm sure that you
23 all know this very well, but some people don't. So with
24 apologies, let me just remind you that the rule that is Rule
25 26(a)(2) requires that the parties produce a number of expert

Lcm2OweC

1 disclosures. Paragraph 8(c) requires that you provide 100
2 percent of those disclosures by the dates that are specified in
3 paragraph 8(c). So it's not good enough if you merely provide
4 your expert's name. It's not good enough if you merely provide
5 her name and her report. Instead, you must provide her name,
6 her report, if applicable, and all of the other information
7 required under Rule 26(a)(2) by the dates that are stated in
8 paragraph 8(c). If you do not provide 100 percent of those
9 requirements by the dates that are specified, you should not
10 expect that your expert will be permitted to provide testimony
11 or other evidence in the case.

12 I doubt that this is likely here, but keep in mind
13 that an expert, whether or not somebody is an expert turns on
14 the nature of their testimony. And so please think carefully
15 about whether or not someone who you may think as a fact
16 witness is actually, given the nature of their testimony,
17 testifying as an expert. So please give that question due
18 consideration. If you fail to provide the requisite
19 disclosures for someone by the date specified in paragraph
20 8(c), you should expect that their testimony will be limited to
21 that which is permitted from a lay expert -- or a lay witness,
22 rather, which can include lay expert opinion -- lay expert
23 opinion testimony under very limited circumstances. But more
24 significantly, you should think carefully about the nature of
25 the testimony that they expect to provide and you should

Lcm2OweC

1 provide the disclosures for that witness. If you conclude that
2 the witness is an expert but need not provide an expert report,
3 don't forget that disclosures are required for experts who do
4 not provide reports. Those disclosures are required to be
5 provided to your adversary by the date specified in paragraph
6 8(c). If you fail to do that, you should not expect that your
7 expert will be permitted to provide expert testimony. I will
8 grant extension for these deadlines, but only for good cause
9 shown. I would certainly scrutinize any request for good
10 cause.

11 I am mindful of the fact that we are setting a very
12 extended period for completion of discovery. You should not
13 expect that I will grant an extension of time. My expectation
14 is that you will make professional judgments about the amount
15 of resources that you want to invest in the case. If for
16 whatever reason you get caught up on something else or you
17 choose not to focus your energies on this case for some other
18 reason, you should not expect that I will find that to be good
19 cause for an extension of these deadlines. Instead, you should
20 expect that I will ask you to live with the consequences of
21 your decisions. After all, at the heart of a showing of good
22 cause is showing of diligence. If you have not acted
23 diligently, you should not expect that I will find good cause
24 for an extension of the deadlines. My expectation is that the
25 parties will do any work that you hope to do in order to

Lcm2OweC

1 resolve the case in parallel with your efforts to litigate it.
2 So please keep that in mind. To put this in very concrete
3 terms, unless I have actually entered an order pausing
4 discovery, if you choose not to take the steps necessary to
5 conduct discovery and to complete litigation of this matter
6 within the time periods established in the case management
7 plan, because you hope or expect that the case is going to
8 settle, you should not expect that I will find that to be good
9 cause for an extension of time.

10 Very good. You will see coincidentally that my
11 individual rules and the case management plan and scheduling
12 order itself require that any requests for an extension of time
13 be made timely. That's no less than two business days prior to
14 the date sought to be extended. You should not expect that I
15 will grant a request if you fail to meet that schedule.

16 Very good. So counsel thank you very much for your
17 time, thank you for your joint letter, thank you for presenting
18 me with interesting issues in the motion to dismiss.

19 Is there anything else that we can talk about here?
20 My understanding is that the parties need some more time to
21 work together before I help you with a reference to mediation
22 or otherwise, but please let me know if that's wrong.

23 Counsel for plaintiffs, anything else that we should
24 take up here before we adjourn?

25 MR. BAUER: Thank you, Judge. This is George Bauer

Lcm2OweC

1 again.

2 No, not at this time. If something does come up, we
3 will certainly inform the Court, but otherwise we thank the
4 Court for its time today.

5 THE COURT: Very good. Thank you very much.

6 Counsel for defendants.

7 MR. HERZINGER: Yes. This is Ken Herzinger, your
8 Honor.

9 I appreciate your time today and I think your Honor is
10 absolutely right, I believe we stated this in the submission,
11 that we don't think it is quite ripe yet to have a conversation
12 about settlement because of the complexity of the case, the
13 need for discovery and then consulting with experts. But we
14 have agreed that we would retain a private mediator at the
15 point we are prepared to have those conversations, and I do
16 appreciate your Honor explaining this in detail. It's very
17 helpful. And I wish everyone a happy holiday. Thank you.

18 THE COURT: Very good. Thank you all. Happy
19 holidays. This proceeding is adjourned.

20 oOo